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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 25 5 of the Telecommunications Act of 1996	)	
	)	WT Docket No. 96-l 98
Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities	)	

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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Telecommunications Equipment, and	)	
Customer Premises Equipment	)	
by Persons with Disabilities	)	

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")[1] hereby submits its reply comments in response to the above-captioned ***Notice of Proposed Rulemaking*** regarding implementation of Section 255.[2] PCIA believes that the Commission should craft flexible rules under which members of the telecommunications industry, both service providers and

[1] PCIA is the international trade association created to represent the interests of both the commercial and private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHZ bands in the Business Radio Service, the 800 and 900 MHZ Business Pools, the 800 MHZ General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] *In the Matter of Implementation of Section 255 of the Telecommunications Act of 1996; Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment to Persons with Disabilities,* 63 Fed. Reg. 28456, WT Docket No. 96-198, FCC *98-55, Notice of Proposed Rulemaking* (Apr. 2, 1998) ("*Notice*").

manufacturers will work together with consumer groups and individuals with disabilities to ensure that all Americans, regardless of disability, are able to access telecommunications equipment and services. At the same time, the Commission must be sure to carry out the statutory mandate set forth by Congress in a technologically and economically reasonable manner.

I. INTRODUCTION AND SUMMARY

Section 255 of the Telecommunications Act of 1996 mandates that, if "readily achievable," telecommunications equipment, customer premises equipment ("CPE"), and telecommunications services shall be "accessible to, and usable by individuals with disabilities."[3] As evidenced by the Commission's Notice and the diverse comments, numerous issues arise in attempting to interpret and implement Section 255. The most notable issues that will be addressed in these comments include: (1) PCIA's support for the Commission's definition of "telecommunications service"; (2) PCIA's support for the Commission's definition of "readily achievable;" and (3) how to better handle complaints to ensure coordination efforts are made between the telecommunications industry and consumer groups.

PCIA and other commenters noted that the wireless industry currently offers a variety of products that are particularly helpful to customers with a variety of disabilities. Voice-activated PCS phones and voice pagers,[4] have become extremely attractive devices for persons with visual

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[3] See 47 U.S.C. §§ 255(b) and(c).

[4] Voice pagers emit a tone alert when a message is received. Someone trying to reach a voice pager calls the voice pager number and leaves a recorded voice message. The voice pager will then emit a tone or vibration alert and the customer will hear the recording of the message that the caller has left, in the caller's own

impairments. In contrast, those with hearing impairments find phones with data capabilities (e.g., electronic mail) and vibrating text pagers to be particularly appealing and, as a result, these types of units are more and more common in the marketplace. Because there are approximately 54 million Americans with disabilities, designing products with the disabled community in mind has been an economically rewarding decision for many companies.[5]

Against this background, PCIA strongly believes that the rules, particularly those pertaining to the complaint process, implementing Section 255 must be structured to encourage the telecommunications industry, including the wireless sector, and their customers with disabilities to ***work together*** to ensure that equipment and services are available wherever economically and technologically feasible.

II. PCIA AGREES WITH THE VAST MAJORITY OF COMMENTERS, THAT THE FCC IS AUTHORIZED TO IMPLEMENT SECTION 255 AND SUPPORTS THE MAJORITY OF DEFINITIONS OFFERED BY THE COMMISSION.

PCIA agrees with the Commission's interpretation that it possesses the statutory authority to adopt the rules necessary to implement Section 255 of the Act and to resolve any complaints

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voice.

[5] *Notice*, at n. 3 (citing Americans with Disabilities: 1994-95, Current Population Reports, Series P70-61, U.S. Bureau of the Census (Aug. 1997)). Although it is estimated that approximately 50 million persons in the United States have some form or degree of disability, not all of these individuals are limited in their ability to use the telephone. As noted in TIA's comments, survey date compiled by the United States Census Bureau indicates that 3.1 million persons aged 15 and older, representing 1.6% of all individuals in that age range, either are unable to use the telephone or have difficulty doing so. According to the Census Bureau, the remaining approximately 98.4% of the population over the age of 15 years and 94% of individuals with disabilities report having no difficulty using the telephone. See TIA at 22; see also U.S. Census Bureau Official Statistics Regarding the Disability of Persons <http://www.census.gov/hhes/www/disable/sipp/disstat.html>. Like TIA, PCIA includes these statistics not to minimize the need to provide accessibility to individuals with disabilities, but merely to suggest that the 54 million estimate is overly broad for the purpose of Section 255.

that arise under this Section.[6] The language of Sections 4(i), 201(b), 303(r) of the Act, along with the authority granted through Section 255(f), clearly empowers the Commission to perform these two functions.[7]

PCIA continues to support the definitions offered by the Commission. However, PCIA, like many other commenters, would be concerned by any effort by the Commission to apply Section 255 beyond the statutorily defined "telecommunications service."[8] PCIA was one of a chorus of commenters that responded to the Commission's comment in the ***Notice*** that it will "consider whether further definition or clarification [of telecommunications service] is appropriate."[9] PCIA, supported by other commenters,[10] fails to find any legal support for any interpretation of "telecommunications service" that would include "information services." The Commission itself notes that the term "telecommunications service" is "broadly grounded in the Communications Act."[11] Turning to congressional intent, there is no definition suggested by Congress other than the one given to "telecommunications service" in the Act itself.

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6 *Notice*, at ¶26.

7 See 47 U.S.C. §§ 154(i), 201(b), and 303(r), Section 4(i) of the Act explicitly permits the Commission to "...perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions"; Section 201(b) of the Act provides that "[t]he Commissioner may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act"; Section 303(r) of the Act provides that the Commission may "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act..."; See *also* 47 U.S.C. § 255(f). Section 255(f) states that "[t]he Commission shall have exclusive jurisdiction with respect to any complaint under this Section.

8 See e.g., NAB at 9-l 5; NCD at 7-12; TDI at 11.

9 *Notice*, at ¶36.

10 See e.g., TIA at 53-56; USTA 5-7; AirTouch at 6; Bell Atlantic at 4; AT&T.

11 *Supra* note 8.

Additionally, the Access Board concluded that Section 255 is limited to "telecommunications services" and excludes information services.[12] Thus, the Commission should follow the clear language of Section 255 itself, the Access Board's conclusion, and the chorus of commenters and maintain the current definition of "telecommunications service" in Section 255.

III. THE "READILY ACHIEVABLE" ANALYSIS MUST BE PERFORMED ON A CASE-BY-CASE BASIS BY CONSIDERING THE THREE FACTORS IDENTIFIED BY THE COMMISSION--FEASIBILITY, COST, AND PRACTICALITY

PCIA agrees with the Commission and other commenters[13] that, without question, feasibility, expense, and practicality provide an excellent framework for determining whether a particular accessibility or compatibility feature is "readily achievable." PCIA considers "feasibility" to be the first prong of the Commission's "readily achievable" test. If an accessibility or compatibility feature is not capable of being implemented with current technology, then the feature is not achievable -- period.'" The Commission must also continue to distinguish, as it did in the ***Notice,***[15] between accessibility and universal accessibility, the latter of which will often be infeasible as accessibility for one disability may undermine accessibility for a different disability.

Like the Commission, PCIA also deems "cost" to be the second prong of the "readily

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12 Access Board Order at 5612.

13 See e.g., TIA at 42; USTA at 8; Bell Atlantic at 5.

14 See also TIA at 43; Bell Atlantic at 6.

15 *Notice,* at ¶101 (where the Commission expressly acknowledged that "accessibility for one disability might limit" accessibility for another disability); See also *Notice* at ¶*15* (noting that the Access Board concluded that universal accessibility will not be possible).

achievable" test. The Commission, with the support of most commenters, incorporated the ADA's definition of "readily achievable," into Section 255(a)(2). Three of the four factors specified by the ADA in determining whether an action is "readily achievable" revolve around economic considerations. Thus, common sense and the ADA definition require the Commission to integrate cost when defining the term "readily achievable."[17] There simply is no justification for disregarding the ADA's inclusion of cost. Congress also requires the Commission to consider economic factors when developing regulations that promote access to telephone service by the disabled." PCIA further agrees with the Commission and commenters in concluding that the expense factor should include the cost of all relevant resources (e.g., opportunity costs, costs incurred because of other required resources such as research and development, employee training, etc.).[18] In addition to these factors, PCIA, and other commenters, strongly encourage the Commission to examine the cumulative costs of multiple accessibility features.[19]

Finally, PCIA endorses the Commission's proposal to factor "practicality" into the "readily achievable" equation. As the Commission points out, the economic, administrative, and physical resources available to a provider are just some of the factors that should be considered

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16 The factors to be considered in determining whether an action is readily achievable include: (1) the nature and cost of the action needed; (2) the overall financial resources of the facility or facilities involved in the action; (3) the overall financial resources of the covered entity; and (4) the type of operation or operations of the covered entity. See 42 U.S.C.§ 12181(9)(A)-(D).

17 See 47 U.S.C. § 610(e) ("[T]he Commission shall specifically consider the costs and benefits to all telephone users, including persons with and without hearing impairments'); *Access to Telecommunications Equipment and Services by Persons with Disabilities*, 11 FCC Rcd 8249, 8274-76 (1996) (considering the costs and benefits of rules implementing 47 U.S.C. § 610).

18 See e.g., TIA at 45-46; GTE at 7; USTA at 10.

19 See e.g., TIA at 4; Motorola at 36.

in evaluating practicality. The Commission's recognition that the potential market for the product or service, the degree to which costs can be recovered, and timing, are all critical factors in determining whether a particular accessibility or compatibility feature is practical is strongly applauded by PCIA and others.[20]

In response to commenters arguing against the inclusion of cost recovery, market conditions, and timing,[21] PCIA again echoes the Commission in noting that the ADA has always incorporated economics into its analysis of readily achievable.[22] Comments to the contrary fail to acknowledge the reality that in any context, not just telecommunications, the ADA considers the economics of an accessibility feature. In the increasingly competitive telecommunications context, failure to account for these factors will hurt some entities while helping others. Each factor offered by the Commission is fundamental to determining the overall practicality of an accessibility feature and thus whether the feature is "readily achievable."

Lastly, PCIA emphasizes that this three-part test must be applied on a case-by-case basis. Feasibility, cost, and practicality are all dependent upon the business entity involved, the product or service in question, and the accessibility feature at issue. A case-by-case approach must be maintained because even though one manufacturer or service provider offers an accessibility feature, it may not be readily achievable or even feasible for another manufacturer or service provider to offer the same feature. Only by examining all of the factors in the context of each

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20 See e.g., CEMA at 14; TIA at 46; GTE at 8.

21 See NCD 22-25; TDI at 17.

22 *Notice,* at ¶94.

case can the goals of Section 255, as well as the overall intent of the Telecommunications Act of 1996 be realized.

IV. THE TELECOMMUNICATIONS NETWORK SHOULD FACILITATE THE EMPLOYMENT OF ACCESSIBILITY FEATURES BY END USERS -- NOT INHIBIT THEM

Section 25 1 (a)(2) of the Act prohibits that a telecommunications carrier from "...install[ing] network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255..."[23] PCIA supports the Commission's interpretation of Section 25 1 (a)(2) as governing the "configuration" of the network capabilities of carriers. The link between Sections 25 l(a)(2) and 255 of the Act is an important one, primarily because it requires manufacturers of network elements, and carriers that incorporate these elements, to coordinate their efforts so that the configuration of the network does nothing to undermine the Section 255 accessibility requirements.

V. TO TRULY SOLVE ACCESS PROBLEMS QUICKLY AND EFFICIENTLY THE "FAST-TRACK" COMPLAINT PROCESS MUST BE REVISITED.

Of the various proposals and questions in the Notice, no issue received more universal attention than the proposed complaint procedures. Although PCIA supports some of the Commission's proposals regarding the Section 255 complaint process, in general, the Commission does not need to establish a new set of complaint procedures specifically tailored for Section 255 complaints. Recently, the Commission completely overhauled its procedures for

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[23] See 47 U.S.C. § 251(a)(2).

formal complaints filed against common carriers.[24] Those changes fulfill the FCC's criteria for an effective Section 255 process and satisfy the Commission's desire for "[a] uniform approach [that] will ensure that the Commission places on all formal complaints the same pro-competitive emphasis underlying the 1996 Act's complaint resolution deadlines."[25]

A. Consumers Should Be Required to Contact the Service Provider or Manufacturer First

In general, PCIA agrees with the overall structure of the first phase of the complaint process. However, PCIA is concerned about the absence of any procedural requirements that complainants have to meet before lodging a Section 255 complaint. Although the Commission notes that it will "encourage potential complainants to contact the manufacturer or service provider . . . before lodging a complaint," a consumer has no obligation to actually do so.[26]

Before proceeding to an informal complaint, PCIA recommends that the Commission first require a consumer to contact the manufacturer or service provider involved directly.[27] By requiring industry and consumers to work together at the outset of each complaint, the Commission best facilitates its goals of consumer responsiveness and efficient allocation of

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[24] *See In the Matter of Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers,* 12 FCC Rcd 22497, CC Docket *No. 96-238,* FCC *97-396, Report and Order (Nov. 25,* 1997); *See also In the Matter of Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers,* CC Docket *No. 96-238, Second Report and Order* (July 9, 1998).

[25] *Id.* at ¶3.

[26] *Notice,* at ¶ *12 7.*

[27] See *also* USTA at 13; TIA at 65; Bell Atlantic at 8; AirTouch at 6; among others.

resources. Any contrary rule encourages a more formal setting in a more adversarial environment and is, therefore, less conducive to cooperation between the parties and causes each to expend more time and resources. Before proceeding to an informal complaint procedure, the Commission should ensure that a complainant made sufficient attempts to contact a manufacturer or service provider, and ensure that the manufacturer or service provider was given adequate time to respond. Only by combining an express requirement that the industry and disabled community work together with the ability of the Commission to subsequently get involved will the Commission encourage cooperation and meet its goals of consumer responsiveness and efficient resource allocation.

On a related note, PCIA also strongly endorses the Commission's proposal to establish a central Commission contact for all Section 255 inquiries and complaints. This contact point should be responsible for generating and maintaining a list of contacts (e.g., registered agent) for all manufacturers and service providers subject to Section 255. Although most PCIA members are likely to provide an internal point of contact for Section 255 inquiries and complaints following implementation of the Commission's Section 255 rules, the Commission should provide for some flexibility and allow manufacturers and service providers to designate different a different contact, even third parties, if desired.

B. The FCC's Timetable Is Unrealistic

The Commission proposes that, within five business days of forwarding a complaint, respondents must submit a report to the Commission in which, among other things, the respondent identifies possible accessibility solutions. Unfortunately, this abbreviated timetable

is unrealistic, as evidenced by calls from both the disabled community and telecommunications industry for a longer timetable. Within that five day period, the Commission expects industry to receive the complaint, gather relevant information, contact the complainant to discuss the complaint, and resolve it. As noted in our original comments, resolving many of these complaints will involve coordination among the customer service, technical, and legal divisions of affected companies and, often times, will require face-to-face meetings between manufacturers and service providers.

In its comments, Nortel states that the average resolution time for complaints far simpler than any likely Section 255 complaint is twenty-one days. The bottom line is that a five-day period will lead to rubber stamped requests for extension and perfunctory responses to complainants that fail to address any substantive problems. Additionally, by placing such unreasonable expectations on carriers and manufacturers, the Commission erodes the ability of the disabled community and industry to work together effectively.

PCIA, and other commenters, instead endorse a 30-day fast-track period which could be extended upon Commission approval.[28] At the end of the fast-track period, respondent companies should be required to report to both the complainant and the Commission, via written correspondence, whether or not the complainant has been provided the access sought. If a complaint remains unresolved, the respondent company should be required to submit an informal report to both the complainant and the Commission explaining why the accessibility has not been

[28] A 30-day limit on the length of the fast-track period is consistent with Section 1.724(a) of the Commission's Rules which requires common carriers to answer complaints within 30 days of service of the pleading to which the answer is made unless otherwise directed by the Commission. See 47 U.S.C. § 1.724(a); See also SBC at 22; CEMA at 22; NCD at 29 (commenting that a five day complaint period is not long enough).

provided. Finally, if the Commission is inclined to implement a mechanism by which the fast-track process could be terminated and the traditional dispute resolution process could be invoked, PCIA recommends that such a mechanism be triggered only upon the consent of both the complaining and responding parties.

C. Any Second-Phase Dispute Resolution Decision by the Commission Should Be Final.

If the fast-track determination is closed, complainants should be able to pursue relief via their choice of either the informal or formal second-phase dispute resolution processes -- but not both. PCIA is not alone in believing the Commission's decision in a second-phase dispute process should be the final determination.[29] Neither the Commission nor respondents should be required to contribute more time and resources to resolving a Section 255 complaint that has already been subjected to the fast-track process and a second-phase process decided by the Commission. Similarly, should all parties submit to an ADR proceeding in lieu of an informal or formal dispute resolution process, any decision reached via ADR should be treated as a final determination, barring complainants from pursuing further relief.

If the Commission or the complainant finds that traditional or alternative dispute resolution (provided all parties agree that ADR is appropriate) is necessary, such a decision needs to be made within a reasonable time frame (i.e., within 6 months of the respondent's filing of an action report).[30] Further, if a decision is not made within the allotted time frame, the Commission

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[29] See also TIA at 82-84; AT&T at 13-14; CTIA at 18.

[30] Requiring the Commission or the complainant to decide whether or not to proceed with dispute resolution processes within six months of the respondent's filing of an action report is consistent with Section 1.7 18

will be deemed to have abandoned the complaint. Finally, the principles of ***res judicata*** should apply to all determinations by the Commission beyond the fast-track proceedings.

Under no circumstances should a carrier or manufacturer have to defend themselves more than one level beyond the fast-track process in any given complaint. Requiring a carrier or manufacturer to defend themselves first in a fast-track proceeding and then in an ADR proceeding, an informal proceeding, and then a formal proceeding amounts to an unprecedented waste of resources and offends traditional notions of due process and fairness.

D. There Needs to Be Both Standing Requirements and a Statute of Limitations for Filing Section 255 Complaints

Several other commenters support PCIA's view that a standing requirement is necessary for filing complaints under Section 255.[31] Although Section 255 does not specifically impose a standing requirement, two important reasons necessitate such a requirement. First, by only allowing interested parties to challenge the presumption of compliance, the Commission lessens the chance of having to deal with frivolous or vindictive complaints. Second, without a standing requirement, the costs incurred in resolving complaints will increase.

The Commission states that one reason for not proposing a standing requirement is that the Commission wants to avoid burdening the complaint process with standing related disputes. In reality, a lack of standing requirement will open the floodgates to litigation, compromise the

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of the Commission's Rules which limits the filing of formal complaints, subsequent to the filing of an informal complaint, to six months from the date of a common carrier's report answering the informal complaint. See 47 U.S.C. § 1.718.

[31] See e.g., TIA at 77-78; AirTouch at 7; USTA at 14; SBC at 20.

grounds for cooperative agreements, and mire legitimate complaints in a morass of frivolous and spurious complaints. Thus, the Supreme Court has repeatedly upheld the importance of such prudential considerations and preserved the "autonomy of those most likely to be affected" by adjudication.[32]

Similarly, PCIA, and other commenters,[33] believe that there should be a time limit for filing complaints under Section 255. As the Commission correctly points out, Section 415(b) of the Communications Act imposes a two-year limit against the filing of any complaints against common carriers for the recovery of damages not based on overcharges. We believe that the two-year window established in Section 415(b) should be carried over and applied to all Section 255 complaints. In other words, complainants would have two years from the date a product is purchased, or from the date a service is subscribed to, in which to file a Section 255 complaint. PCIA, with the support of other commenters,[34] believes the limitation is important in the telecommunications context for two reasons. First, the longer the delay in bringing a complaint, the more impractical it becomes to make changes. This is a result of both the production cycle and the fact that the development of any one product or service may be dependent upon other products or services. Second, technological development and implementation, the driving force in telecommunications right now, would be hampered by an open ended complaint period. Current product life cycles are shrinking to between twelve to twenty-four months. Without a

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[32] *See Lujan v. National Wildlife Federation, 497* U.S. *87* 1 *(1990); see also Valley Forge Christian College v. Americans Unitedfor Separation of Church and State, 454* U.S. 464 (1982).

[33] See e.g., TIA at 86; AirTouch at 7; BellSouth at 12.

[34] See e.g., TIA at 86-87.

reasonable statute of limitations, uncertainty about accessibility within one product generation will carry over into the next.

E. PCIA Supports the Use of ADR to Resolve Section 255 Disputes and the Commission's "Laundry List" of Guidelines

PCIA supports the Commission's proposal to use ADR, subject to the agreement of all parties, as a third tool to resolve Section 255 disputes. However, as noted earlier, any party that seeks ADR must make their request to the Commission within six months of the respondent's filing of an action report.[35] If the Commission ultimately decides to adopt its ADR proposal, the Commission should also prescribe a method for selecting the individuals necessary to oversee the ADR process.[36] Further, the Commission should act as both a facilitator and observer of the ADR process and all ADR decisions should be fully enforced by the Commission and treated as final.

PCIA continues to endorse the Commission's "laundry list" of guidelines that manufacturers and service providers can consider in order to determine whether or not their products and/or services comply with Section 255 of the Act. However, in order for such a list to be effective, it must be explicit and clearly explain what each description on the list means in

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[35] As noted earlier (*Supra* § § V (C) and (D) at 12), requiring the Commission to decide whether or not to proceed with dispute resolution processes within six months of the respondent's filing of an action report is consistent with Section 1.7 18 of the Commission's Rules which limits the filing of formal complaints, subsequent to the filing of an informal complaint, to six months from the date of a common carrier's report answering the informal complaint. See 47 U.S.C. § 1.718.

[36] Although PCIA supports the concept of ADR for Section 255 disputes, PCIA also realizes that there are currently few "experts" in the field of telecommunications accessibility. The ability to assess whether it is readily achievable to incorporate a given accessibility function into a particular service or piece of equipment is an extremely complex task, and thus, ADR may not be an appropriate option for at least two years.

terms of actual functionality. In addition, PCIA and others,[37] urge that the list must remain a guide and not be absolute. Without flexibility, without a give and take between various features, and between the industry and consumer groups, the ultimate goals of Section 255 will not be met. Finally, like the Commission and other commenters, PCIA supports the notion that it is reasonable for an informed product-development decision maker to consider the accessibility features of other functionally similar products that the service-provider or manufacturer offers.[38]

VI. THE FCC SHOULD HAVE EXCLUSIVE JURISDICTION OVER SECTION 255 COMPLAINTS, BUT SHOULD NOT BE ABLE TO APPLY SECTION 255 RETROACTIVELY

Section 255(f) mandates that "[t]he Commission shall have exclusive jurisdiction with respect to any complaint under this Section." Section 255(f) also states that "[n]othing in this Section shall be construed to authorize any private right of action to enforce any requirement of this Section or any regulation thereunder." As a result, PCIA and the vast majority of commenters, believe that Section 255 clearly disallows a complainant to bring suit, pursuant to Section 207 of the Act, for the recovery of damages.

However, PCIA does not believe that Section 255 can be applied retroactively. PCIA was one of many commenting that the Commission should not order the retrofitting of accessibility features into existing products that were designed without accessibility features, even if the Commission determines that the incorporation of such features in the original design

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[37] See *also* TIA at 16; Motorola at 15-16.

[38] See e.g., TIA at 15.

would have been readily achievable.[39] Although the Commission states in the Notice that Section 255 has been in effect since 1996,[40] the language of Section 255 itself references guidelines to be developed in the future.[41] Additionally, the legislative history indicates an intent for Section 255 to be prospective.[42] Thus, based on Congressional intent as evidenced in the statute itself and the legislative history, Section 255 is not self-enacting and therefore may not be applied retroactively. This is even more clear with respect to telecommunications carriers, where the language of Section 25 l(2) establishes the carriers' obligation to "comply with the guidelines and standards ***establishedpursuant to*** Section 255 or 256."[43] Punishing a carrier for not complying with non-existent regulations would not only be patently unfair, but would violate the language of the statute.

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[39] See e.g., CEMA at 15; SBC at 12; TIA at 79; CTIA at 10.

[40] *Notice* at ¶8.

[41] 47 U.S.C. § 255(e) (requiring the Access Board to develop accessibility guidelines in conjunction with the Commission within 18 months).

[42] See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., at 53 (1996) (The Committee intends that telecommunications manufacturer and carrier obligations should arise after the promulgation of regulations by the Commission).

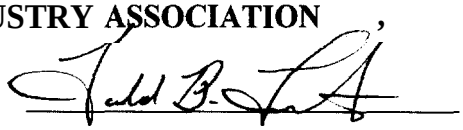
[43] *47* U.S.C. § 251(a)(2).

VII. CONCLUSION

There is no question that one of the fundamental objectives of the 1996 Communications Act was to ensure that all Americans have the ability to access and benefit from advances in telecommunications services and equipment.[44] PCIA applauds the FCC's commitment to carry out this objective, and to do so "in a practical, common sense manner."[45] PCIA urges the Commission to adopt the changes suggested in these reply comments.

Respectfully submitted,

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

By: 

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[44] See e.g., § 225 (which governs Telecommunications Relay Services (TRS) for hearing-impaired and speech-impaired individuals); § 25 l(a)(2) (prohibiting a telecommunications carrier from installing network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 of the Act); § 7 10 (mandating hearing aid compatibility (HAC) for wireline telephones); and § 7 13 (requiring accessibility of video programming (closed captioning)).

[45] *Notice* at ¶3.

cc: The Honorable William E. Kennard
The Honorable Susan Ness
The Honorable Michael K. Powell
The Honorable Harold Furchtgott-Roth
The Honorable Gloria Tristani
Mr. Daniel Phythyon, Chief, Wireless Telecommunications Bureau
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